

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1862

SPONSOR: Judiciary Committee and Senator Smith

SUBJECT: Arbitrator Compensation Limitation

DATE: March 18, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Lang</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Martin</u>	<u>Martin</u>	<u>AAV</u>	<u>Favorable</u>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This CS increases the \$200 per day cap on arbitrator compensation to \$500 per day, in court-ordered, nonbinding arbitration cases.

This CS substantially amends s. 44.103, F.S.

II. Present Situation:

Arbitration

State court arbitration is statutorily divided into two areas: court-ordered nonbinding and voluntary binding arbitration. Judges may assign nonbinding arbitration cases to a single arbitrator (who must be an attorney) or a panel of three (the chief arbitrator must be an attorney, but the other two arbitrators can be non-attorneys, upon written agreement of the parties).¹ In 1994, the Florida Supreme Court adopted the Florida Rules for Court-Appointed Arbitrators which contain qualifications, standards of professional conduct and rules of discipline, for court-appointed arbitrators. To qualify as an arbitrator, individuals must complete a training session which has been approved by the Florida Supreme Court or be a former Florida trial court judge.²

Statutory Authority

The term "arbitration" is defined as:

¹ R. 11.010 and 11.020, Florida Rules for Court Appointed Arbitrators, F.R.C.P.

² A Compendium, Florida Mediation & Arbitration Programs, Dispute Resolution Center (14th ed. 2001).

A process whereby a neutral third person or panel, called an arbitrator or arbitration panel, considers the facts and arguments presented by the parties and renders a decision which may be binding or nonbinding....³

Section 44.103, F.S., relates to court-ordered, nonbinding arbitration. The Supreme Court governs practice and procedure relating to court-ordered, nonbinding arbitration. A court may refer any contested civil action filed in circuit or county court to nonbinding arbitration, in accordance with Supreme Court rules.⁴

Current law limits arbitrator compensation to \$200 a day, unless otherwise agreed to by the parties and approved by the court, paid by the county or by the parties. The Supreme Court is the designated body for adopting rules governing selection and compensation of arbitrators.⁵

Arbitrators are entitled to immunity from liability.⁶

Florida Rules of Civil Procedure

Rule 1.810 provides, in part:

(b) Compensation. The chief judge of each judicial circuit shall establish the compensation of arbitrators subject to the limitations in section 44.103 (3), Florida Statutes.⁷

III. Effect of Proposed Changes:

This CS increases the \$200 per day cap on arbitrator compensation to \$500 per day. Under this CS, the parties are still authorized to exceed the cap, subject to court approval.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³ s. 44.1011(1), F.S.

⁴ s. 44.103, F.S.

⁵ s. 44.103 (3), F.S.

⁶ s. 44.107, F.S.

⁷ R. 1.810, F.R.C.P.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The \$200 cap language has not been changed since 1988. Increasing the cap may attract more arbitrators.

C. Government Sector Impact:

None. State funds are not used to pay for arbitrator compensation.

VI. Technical Deficiencies:

Under the rules of statutory construction, a section of law that cross-references another section or portion thereof that is subsequently amended does not incorporate those amendments unless the section containing the cross-reference is reenacted (republished). Otherwise, the statutory cross-reference is linked to the version of the section that existed prior to the amendment. Section 44.103, F.S., as revised by this CS, is cross-referenced in s. 44.107, F.S., relating to the granting of immunity for arbitrators and mediators. Section 44.103, F.S., is also cross-referenced in s. 723.0381, F.S., relating to the authority of the court to refer failed mediation cases to nonbinding arbitration. Although these are not directly related to arbitrator compensation, these sections may still need to be republished in order to incorporate the amendments to s. 44.103, F.S.

VII. Related Issues:**VIII. Amendments:**

None.